

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

MCI TELECOMMUNICATIONS CORPORATION )

CC Docket No. 96-149

Petition For Declaratory Ruling )

Regarding the Joint Marketing )

Restriction in Section 271(e)(1) of the )

Communications Act of 1934, as amended )

by the Telecommunications Act of 1996 )

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OFFICE OF THE SECRETARY

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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## SUMMARY

Most of the initial comments on MCI's Petition for Declaratory Ruling, particularly those filed by the BOCs, take an overly expansive view of the scope of the joint marketing restriction in Section 271(e)(1) of the Communications Act. In some cases, the BOCs request the Commission to deny the relief sought by MCI, based on arguments they have presented in support of petitions for reconsideration of the Non-Accounting Safeguards Order. Based on the interpretation of Section 271(e)(1) set forth in the order itself, however, the MCI marketing materials attached to its Petition do not violate Section 271(e)(1).

Some of the initial comments raise issues far removed from the joint marketing issues presented in MCI's Petition, and some request that additional MCI marketing materials be reviewed in this proceeding. In particular, Ameritech and other BOCs focus on newspaper and Internet advertisements explicitly aimed at business customers. Since MCI provides local services to such customers only via its own facilities, such advertisements are not covered by Section 271(e)(1).

Of the relevant comments, the BOCs' primary focus is their assertion that the mailings attached as Exhibits A-C to MCI's Petition promote the benefits of one-stop shopping and joint customer care for MCI long distance and resold local services. They argue that unless and until a customer is taking both local and long distance services from a covered IXC, the IXC cannot advertise joint billing and other aspects of joint customer care.

They also argue that the discussions of joint customer care and other aspects of the MCI marketing materials illegally suggest one-stop shopping.

These arguments are all incorrect, both legally and in terms of the factual characterizations of MCI's marketing materials. The Non-Accounting Safeguards Order explicitly authorizes joint customer care for subscribers to a covered IXC's resold local and long distance services and permits covered IXCs to make "truthful statements about services" that they are "authorized to provide." The order also explicitly permits a covered IXC to "advertise the availability of" long distance and resold local services "in a single advertisement," as long as the advertisement does not suggest that the IXC "may offer bundled packages of" resold local and long distance services "or that it can provide 'one-stop shopping' of both services through a single transaction."

Since MCI is authorized to provide joint customer care, it may advertise the benefits of such care. It would violate the First Amendment to prohibit IXCs from advertising the joint customer care they are authorized to provide, and all of the materials in Exhibits A-C lawfully do so. None of them, however, advertises bundled packages of services or the purchase of both long distance and resold local services in a single transaction. Each of the mailings in those attachments, taken as a whole, is clearly directed only at existing MCI long distance customers and promotes MCI's local service, rather than the purchase of both services in a bundled package or in a single transaction.

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Communications Act of 1934, as amended	)	
by the Telecommunications Act of 1996	)	

**REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby replies to the initial comments filed in response to the Public Notice on MCI's Petition for Declaratory Ruling in this matter.<sup>1</sup> In its Petition, MCI requested that the Commission explain how its rules implementing Section 271(e)(1) of the Communications Act would apply to certain MCI marketing materials attached to the Petition. The Commission adopted such rules in the Non-Accounting Safeguards Order, in which it discussed the practices that it interpreted Section 271(e)(1) to proscribe and to permit concerning joint marketing by certain interexchange carriers of interexchange and local exchange services, including resold Bell Operating Company (BOC) local exchange services.<sup>2</sup>

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<sup>1</sup> Pleading Cycle Established for Comments on MCI Petition for Declaratory Ruling Regarding the Joint Marketing Restriction in Section 271(e)(1) of the Act, CC Docket No. 96-149, DA 97-1003 (released May 9, 1997).

<sup>2</sup> First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of

MCI's Petition

In its Petition, MCI summarized the joint marketing rules set forth in the Non-Accounting Safeguards Order. The Commission ruled that the following specific restrictions apply to a covered long distance carrier's marketing of long distance and resold BOC local exchange services prior to a BOC's entry into long distance service in a given state. A covered long distance carrier may not:

- (A) combine long distance with resold BOC local services and provide a discount for both;<sup>3</sup>
- (B) condition the availability of either long distance or resold BOC local service on the purchase of the other;<sup>4</sup>
- (C) offer long distance and resold BOC local service as a single combined product;<sup>5</sup>
- (D) market long distance and resold BOC local service through a single transaction;<sup>6</sup> or
- (E) mislead the public in an advertisement for both long distance and resold BOC local service by stating or implying that it can offer (A)-(D) above.<sup>7</sup>

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Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (rel. December 24, 1996) (Non-Accounting Safeguards Order), petitions for recon. pending, appeal pending sub nom. SBC Communications, Inc. v. FCC, No. 97-1118 (D.C. Cir. filed Mar. 5, 1997).

<sup>3</sup> Non-Accounting Safeguards Order at ¶ 277.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. at ¶ 278. A "single transaction" is defined as "the use of the same sales agent to market both products to the same customer during a single communication."

<sup>7</sup> Id. at ¶ 280.

Given the policy in the 1996 Act favoring entry into local markets through resale as well as other methods, the First Amendment implications of any curb on advertising, and the absence of any structural separation requirements for long distance carriers like those established for the BOCs in Section 272(b) of the Act, MCI argued that Section 271(e)(1) could not be interpreted to prohibit additional activities.

The Non-Accounting Safeguards Order explicitly permitted a variety of marketing and other activities that the Commission found were not prohibited by Section 271(e)(1):

- (A) Other than misleading advertisements, referred to above, a covered long distance carrier may advertise the availability of interLATA services and resold BOC local services in a single advertisement;<sup>8</sup>
- (B) After a customer subscribes to both interLATA and resold BOC local services from a covered long distance carrier, that carrier may provide joint "customer care" (*i.e.*, a single bill for both services and a single point of contact for maintenance, repairs and other customer services);<sup>9</sup>
- (C) Because Section 271(e)(1) applies only to activities that take place "prior to a customer's decision to subscribe," once a customer decides to subscribe to both interLATA and resold BOC local services from a covered long distance carrier, that carrier may market any new services to such subscriber.<sup>10</sup>

Based on these rules, MCI argued that the mailings attached

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<sup>8</sup> Id. at ¶ 280.

<sup>9</sup> Id. at ¶ 281.

<sup>10</sup> Id.

to its Petition did not constitute prohibited joint marketing. First, the mailings in Exhibits A-C were sent only to MCI long distance customers. As MCI had already successfully sold those customers long distance service, the mailers could not be promoting a customer's initial subscription to both long distance and resold local services in a single transaction.

Moreover, all of the mailings attached to the Petition clearly market local service, rather than both local and long distance services. They promise, for those MCI long distance customers who also sign up for MCI local service, joint customer care -- "one call to one company for customer service" and "one easy-to-read monthly statement for both your local and long distance calls." MCI pointed out that the Non-Accounting Safeguards Order specifically permitted such advertising of joint customer care.<sup>11</sup> Accordingly, none of the mailings attached to the Petition violates the Commission's express joint marketing prohibitions.

MCI also explained in the Petition that none of the mailings attached thereto could constitutionally be found to violate Section 271(e)(1), given the First Amendment requirement, as recognized in the Non-Accounting Safeguards Order, to construe any such restrictions on speech narrowly.<sup>12</sup> MCI pointed out that it is essential that the Commission apply the statute, and its

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<sup>11</sup> See id. at ¶¶ 280-81.

<sup>12</sup> Id. at ¶ 279, citing United States v. X-Citement Video, 115 S.Ct. 464, 467, 469 (1994).



Non-Accounting Safeguards Order as well, in a manner that does not infringe upon MCI's or other carriers' constitutional rights.

#### The Initial Comments

In their comments, the BOCs predictably take a much broader view of the scope of Section 271(e)(1) and of the types of activities that have been proscribed by the Non-Accounting Safeguards Order. In some cases, the BOCs apparently hope to secure the practical equivalent of reconsideration of that order in this proceeding. They express disappointment with what they view as the narrowness of the scope of the order and request that the Commission find that the MCI marketing materials violate Section 271(e)(1) in spite of the rules set forth in the order,<sup>13</sup> in some cases, based on the same arguments presented in support of pending petitions for reconsideration of the Non-Accounting Safeguards Order.<sup>14</sup> Based on the order itself, however, rather than the BOCs' requested modifications of that order, the MCI marketing materials attached to the Petition do not violate Section 271(e)(1), and MCI requests that the Commission make such a finding.

Implicitly recognizing that they do not have much to say about the marketing materials attached to the Petition, some of

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<sup>13</sup> Ironically, some of the BOCs characterize MCI's Petition itself as an untimely request for reconsideration of the Non-Accounting Safeguards Order, apparently under the theory that their own requests to expand on the scope of Section 271(e)(1) will not be noticed. See, e.g., Ameritech Comments at 5-7 & n.7.

<sup>14</sup> See SBC Opposition at 3-4; Ameritech Comments at 9-10.

the BOCs take the opportunity to complain about a host of other perceived faults on the part of MCI and AT&T,<sup>15</sup> including an alleged violation of Section 201(b) unrelated to the joint marketing restriction that is the subject of the Petition.<sup>16</sup> BellSouth wanders even further afield with a comparison between the First Amendment concerns raised by an overly strict application of Section 271(e)(1) to advertising material with the BOCs' First Amendment concerns as to the Commission's application of Section 274 to the BOCs' electronic publishing activities.<sup>17</sup> The point of that exercise is not clear, except perhaps to express a general feeling among the BOCs that MCI should not complain so much about the burdens of regulation. Of course, MCI has no market power and is thus in less need of regulation than the BOCs, as reflected in the market entry and separation restrictions imposed on the BOCs in, inter alia, Sections 271, 272 and 274 of the Communications Act.

Some of the commenters also complain about marketing materials not attached to the Petition<sup>18</sup> and rumored MCI joint

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<sup>15</sup> See, e.g., SBC Opposition at 8-9.

<sup>16</sup> See Ameritech Comments at 10-11. Ameritech complains about MCI's mailing to potential Lifeline customers in California. Apparently, Ameritech is unaware of the Lifeline program in that state, in which eligible users certify to their local service provider that they meet the criteria. MCI accordingly needs to ask potential Lifeline customers for such certification and, if they are not eligible, MCI must be able to provide an appropriate non-subsidized rate plan.

<sup>17</sup> See BellSouth Comments at 9-10.

<sup>18</sup> See US West Comments at 3-4.

marketing practices by sales personnel.<sup>19</sup> Ameritech takes the opportunity to repeat its complaint about the marketing piece that is the subject of its pending formal complaint proceeding.<sup>20</sup>

MCI has already fully addressed the Ameritech complaint in its Motion for Summary Judgment filed in that case, a copy of which is attached hereto for the convenience of the Commission. As explained therein, the advertisement challenged by Ameritech is explicitly targeted only at "larger businesses," which are provided MCI local services in Ameritech territory only through MCI's own facilities. Ameritech's refusal to read the entire advertisement cannot convert it into the joint marketing of long distance and resold local service.<sup>21</sup> The same is true of the advertisement directed at "larger businesses" in the San Francisco area appended as Attachment 1 to the SBC Opposition and similar advertisements attached to the US West Comments. The Internet materials attached to the SBC Opposition and US West Comments are also aimed at "business" customers, which are provided MCI local service only via MCI's facilities.

Thus, none of those marketing materials violates Section 271(e)(1), which covers only resold BOC local service. As explained in the attached Motion for Summary Judgment, it is irrelevant that MCI might provide resold local service to other

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<sup>19</sup> See Time Warner Comments at 4.

<sup>20</sup> See Ameritech Comments at 11-13.

<sup>21</sup> See id. at 12 (ignoring that the advertisement in question targets "larger businesses").

types of customers not targeted by such promotional material. As for the other extraneous matters raised by the commenting parties, MCI believes that it would be more productive to focus on the joint marketing issues raised in its Petition, rather than try to cover the full range of complaints about MCI's activities in the initial comments.

MCI's Marketing Materials Do Not Violate Section 271(e)(1)

Of the relevant comments in the initial filings, most of the criticism is directed at Exhibits A through C, particularly the second page of Exhibit A. The BOCs allege that these mailings tout the benefits of one-stop shopping and joint customer care and are directed at persons who are not yet customers of MCI for both local and interexchange services. They argue that unless and until a customer is taking both local and long distance service from one of the covered interexchange carriers (IXCs), the IXC cannot advertise joint billing and other aspects of joint "customer care."<sup>22</sup> They also characterize these mailings, including the discussions of joint customer care,<sup>23</sup> as marketing local and long distance services in a manner that conveys the impression that a customer can subscribe to both in a single "one-stop shopping" transaction and argue that such mailings are

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<sup>22</sup> See BellSouth Comments 6.

<sup>23</sup> See SBC Opposition at 6.

thus illegal.<sup>24</sup>

These arguments are all incorrect. The Non-Accounting Safeguards Order clearly states that:

(1) "after a potential customer subscribes to both interLATA and BOC resold local services from a covered interexchange carrier, that carrier should be permitted to provide joint 'customer care' (i.e., a single bill for both BOC resold local services and interLATA services, and a single point-of-contact for maintenance and repairs);"<sup>25</sup>

(2) consistent with the governing First Amendment case law, a covered IXC may make any "truthful statements about services that the interexchange carrier is authorized to provide;"<sup>26</sup> and

(3) "a covered interexchange carrier may advertise the availability of interLATA services and BOC resold local services in a single advertisement...."<sup>27</sup> The only qualification to that statement is that "such carrier may not mislead the public by stating or implying that it may offer bundled packages of interLATA service and BOC resold service, or that it can provide 'one-stop shopping' of both services through a single transaction."<sup>28</sup>

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<sup>24</sup> See Ameritech Comments at 7-10; BellSouth Comments at 5-9.

<sup>25</sup> Non-Accounting Safeguards Order at ¶ 281.

<sup>26</sup> Id. at ¶ 280.

<sup>27</sup> Id.

<sup>28</sup> Id.

Those findings, taken together, lead to only one possible conclusion: none of MCI's marketing materials violates Section 271(e)(1).

A. Advertising Joint Customer Care is Legal

It is clear from findings (1) and (2) above that a covered IXC is not required, as some commenters seem to believe, to keep secret the legitimate benefits of joint billing and other aspects of joint customer care until after a customer signs up for both local and long distance service with that IXC.<sup>29</sup> The benefits of joint customer care that a covered IXC "is authorized to provide" after a customer signs up for both local and long distance service may be truthfully advertised to anyone at any time.

There is no restriction on the advertising of joint customer care in the Non-Accounting Safeguards Order. Moreover, there is not really a restriction on the provision of joint customer care. Rather, joint customer care, logically, is something that could be provided only after a customer has signed up for both local and long distance services. Since joint customer care is a legitimate activity, it can be advertised, which, of course, means that it can be advertised to persons who are not yet customers for both services.

Moreover, any argument that an IXC may not advertise the benefits of joint customer care is precluded by finding (3) above that both resold local and long distance services may be

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<sup>29</sup> See Time Warner Comments at 10.

discussed in the same advertisement.<sup>30</sup> The exceptions to that express permission in the order, prohibiting bundled packages of services and one-stop shopping, are not implicated by joint customer care. Joint customer care is not equivalent to one-stop shopping, as Time Warner seems to suggest.<sup>31</sup> Joint billing and customer service have nothing to do with the decision to subscribe, and it is only the latter that is involved in one-stop shopping, as that term is used in the Non-Accounting Safeguards Order.<sup>32</sup>

Some of the BOCs attack the discussions of joint customer care in the MCI materials on the grounds that there is no such thing as "post-marketing" activities, since marketing is a continual process.<sup>33</sup> That is one of the arguments they have raised on reconsideration of the Non-Accounting Safeguards Order, however, and cannot be considered here. Moreover, the argument makes no sense, since it would erase any distinction between marketing and any other aspect of providing service and thereby greatly expand the restriction on joint marketing in Section 271(e)(1). Thus, statements that tout the benefits of joint customer care are not, and could not constitutionally be, proscribed.

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<sup>30</sup> Non-Accounting Safeguards Order at ¶ 280.

<sup>31</sup> Time Warner Comments at 8.

<sup>32</sup> See Non-Accounting Safeguards Order at ¶¶ 277-78, 280.

<sup>33</sup> See SBC Opposition at 3-4.

B. None of the Mailings Attached to the Petition  
Advertises One-Stop Shopping

The arguments that some of the statements in the materials attached to the Petition, especially Exhibits A and B, imply the availability of illegal one-stop shopping<sup>34</sup> misrepresent the holding of the Non-Accounting Safeguards Order. It is clear from finding (3) above that the second page of Exhibit A, which mentions both MCI's "Friends and Family" long distance service and local service, is not prohibited simply because it markets both of those services.

That page also states that "[j]oining MCI is quick and easy" and provides a number to call. Contrary to arguments in some of the comments, however,<sup>35</sup> it is hardly realistic to consider the contents of that page a statement that MCI "can provide 'one-stop shopping' of both services through a single transaction," since it is clearly part of a mailing to persons who are already MCI long distance customers. The opportunity for MCI to become such persons' local and long distance provider "through a single transaction" has already passed; they can only be sold MCI's local service at this point. Other forms of prohibited joint marketing to such a customer -- such as offering bundled discounts -- may still be possible in theory, but nothing on the second page of Exhibit A or in any of the other materials

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<sup>34</sup> See SBC Opposition at 6; BellSouth Comments at 5-9; Bell Atlantic/Nynex Opposition at 1-3; US West Comments at 3.

<sup>35</sup> See, e.g., US West Comments at 3; Bell Atlantic/Nynex Opposition at 1-2.



attached to the Petition suggests such prohibited price bundling.<sup>36</sup>

The criticisms of the second page of Exhibit A -- including Ameritech's charge that it "contains no information, warning or disclaimer that would inform the public that MCI may not offer one-stop shopping of local and long-distance services" -- thus miss the mark.<sup>37</sup> No such disclaimer is necessary, because Exhibit A was only sent to MCI long distance service customers and is clearly targeted at such existing MCI customers. They, unlike members of the general "public," can never take advantage of such an opportunity for "one-stop shopping of local and long-distance services" because they already have MCI long distance services.

Moreover, the first page of Exhibit A makes it even more clear that Exhibit A, taken as a whole, markets only local service. The impression or implication that is conveyed therefore has nothing to do with one-stop shopping for both services. In fact, Exhibit A negates any such impression by providing two different telephone numbers to call: one number on the first page clearly devoted to "local phone service" and another number on the second page following the discussion of

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<sup>36</sup> For example, Bell Atlantic/Nynex argue, at page 3, that MCI could still offer a "bundled package" of long distance and resold local services to someone who is already an MCI long distance customer, but nothing in Exhibit A suggests such bundled pricing.

<sup>37</sup> Ameritech Comments at 8. See also, Bell Atlantic/Nynex Comments at 1-2; US West Comments at 3.

"Friends and Family."<sup>38</sup>

BellSouth insists that the phrase "One company... one bill... one call" in Exhibit B also gives the impression that MCI may offer bundled packages of long distance and local services.<sup>39</sup> BellSouth never articulates the supposed connection, however, between that phrase and a decision to subscribe to both MCI long distance and local services in a single transaction, especially in light of the fact that all of the recipients of Exhibit B are already MCI long distance customers. The context in which that phrase appears makes it even more apparent that the subject is joint customer care, rather than one-stop shopping. Immediately following that phrase, Exhibit B states:

When you choose MCI as your local phone service carrier, you'll enjoy the convenience of receiving one consolidated, easy-to-understand monthly bill. And if you ever have a question, an MCI Local Communications Specialists [sic] is ready to help you 24 hours a day, 7 days a week.

No reasonable consumer could possibly interpret that message as anything other than a discussion of the benefits of post-marketing, post-sale customer care. BellSouth has certainly not demonstrated how any other interpretation could be possible.

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<sup>38</sup> BellSouth's and other parties' misreading of Exhibit A as consisting of two separate mailings (see BellSouth Comments at 5), may have contributed to their view that the second page constitutes prohibited joint marketing, although MCI would take issue with such a position even if that page were a stand-alone mailing. See also, Bell Atlantic/Nynex Opposition at 1-2 & n.1; US West Comments at 3.

<sup>39</sup> BellSouth Comments at 5. See also, Time Warner Comments at 8-10 (discussing both Exhibits A and B as advertising one-stop shopping).

Thus, it is BellSouth, not MCI, that "is attempting to mislead ... the Commission."<sup>40</sup>

Ameritech and BellSouth also try to suggest that the mailings in Exhibit C convey the availability of one-stop shopping.<sup>41</sup> They point to the following language in particular:

One company. One bill. One call.

And when you choose MCI for both local and long distance service, you get even more great benefits:

- \* One call for all your Customer Service needs
- \* One easy-to-read phone bill to pay each month
- \* One company to consult for all your communications

Ameritech argues that this gives the impression that long distance customers "can avail themselves of one-stop shopping to purchase MCI local service, along with additional or different long-distance services from MCI."<sup>42</sup> The problem with that theory is that the quoted language, like the language in Exhibit B, is clearly focused on "post-marketing" "joint `customer care,'"<sup>43</sup> which, as explained above, may be truthfully advertised. It does not suggest that the two services may be purchased together in a single transaction. The absence of any suggestion of one-stop shopping is especially apparent when one views the quoted language in the context of each of the entire mailings in Exhibit

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<sup>40</sup> See BellSouth Comments at 5.

<sup>41</sup> Ameritech Comments at 8-10; BellSouth Comments at 6-7. See also, Time Warner Comments at 10-11.

<sup>42</sup> Ameritech Comments at 9.

<sup>43</sup> See Non-Accounting Safeguards Order at ¶ 281.

C. Each of those letters clearly markets only local service, thus precluding the joint purpose Ameritech and BellSouth read into them.<sup>44</sup>

SBC tries to meld the concepts of one-stop shopping and joint customer care together to create a restriction that the Commission has not promulgated when it states that the covered IXC's "are prohibited from marketing themselves as a single point of contact."<sup>45</sup> BellSouth similarly finds a violation in giving the impression that "there is 'one place' to go for your local and long distance phone needs: MCI."<sup>46</sup> The Non-Accounting Safeguards Order, however, does not prohibit that. Because "a separate sales force is not necessary to accomplish the primary congressional objective of barring the affected interexchange carrier from offering 'one stop shopping' for interLATA and BOC resold local services," "a single agent is permitted to market

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<sup>44</sup> The same goes for Ameritech's further argument that this language in Exhibit C also promotes one-stop shopping for additional local and long distance services after a customer becomes a subscriber to both MCI's resold local and long distance services. See Ameritech Comments at 9-10. As pointed out above, this language, especially in the context of the letters in which the language appears, does not market long distance service, whether jointly with local service or otherwise.

Moreover, as Ameritech admits, such one-stop shopping after a customer becomes an MCI subscriber for both local and long distance services is expressly permitted under the Non-Accounting Safeguards Order, at ¶ 281, a state of affairs that could only be altered on reconsideration of that order. See Ameritech Comments at 9. This is yet another instance in which the BOCs argue for a ruling on MCI's Petition that would require reconsideration, rather than application, of the Non-Accounting Safeguards Order.

<sup>45</sup> SBC Opposition at 7.

<sup>46</sup> BellSouth Comments at 6.

interLATA services in the context of one communication, and to market BOC resold local services to the same potential customer in the context of a separate communication."<sup>47</sup>

Thus, there is no restriction on selling both local and long distance service through a "single point of contact" or from "one place;" indeed, the quoted language can only be read as an explicit approval for such a procedure. The local and long distance service simply may not be sold in the same transaction, through the single point of contact. The Non-Accounting Safeguards Order uses the phrase "single point of contact" in the Section 271(e)(1) discussion only to endorse joint customer care in paragraph 281. SBC's rule against covered IXCs "marketing themselves as a single point of contact" is another attempt to rewrite the order to expand the range of prohibited activities.

BellSouth presents another imaginative reading of the Non-Accounting Safeguards Order and the marketing materials attached as Exhibits C and D to the Petition in asserting that the latter are more in the nature of solicitations by a single MCI representative. According to BellSouth, each such mailing constitutes a "single transaction" marketing both local and long distance services, which is prohibited under the order.<sup>48</sup> As already explained, however, the context of each of the letters in Exhibit C makes clear that the language challenged by BellSouth relates only to joint customer care, not one-stop shopping.

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<sup>47</sup> Non-Accounting Safeguards Order at ¶ 278.

<sup>48</sup> BellSouth Comments at 7-8.

Moreover, they are only sent to MCI long distance customers, who, by definition, cannot decide to subscribe to both local and long distance services in a single transaction. BellSouth clearly has not read the letters in Exhibit D, since they discuss only local services and do not even mention joint customer care. Even under the BOCs' most extreme theories, the materials in Exhibit D do not violate Section 271(e)(1).<sup>49</sup>

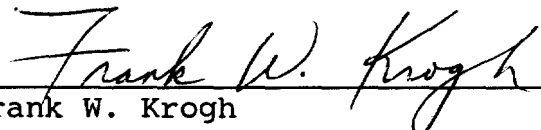
Conclusion

None of the mailings attached to MCI's Petition promotes the purchase of both long distance and resold local services in a single transaction. Rather, those materials market the sale of resold local service to existing long distance customers and discuss the benefits of joint customer care. Those materials thus do not violate Section 271(e)(1) of the Communications Act.

Respectfully Submitted,

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Dated: June 24, 1997

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<sup>49</sup> Time Warner also expresses the view on page 11 of its Comments that the materials in Exhibit D do not violate Section 271(e)(1).

ATTACHMENT

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AMERITECH CORPORATION,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. E-97-17
	)	
MCI TELECOMMUNICATIONS CORPORATION,	)	
	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT

Defendant MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby moves for summary judgment dismissing the Amended Complaint filed in this proceeding by Ameritech Corporation on the grounds that it fails to state a claim upon which relief may be granted under the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., and is based on a construction of the joint marketing restriction in Section 271(e)(1) of the Communications Act, 47 U.S.C. § 271(e)(1), that is precluded by the First Amendment to the United States Constitution.

As explained in detail below, the advertisement of which Ameritech complains is clearly aimed only at large business customers and has been run only in markets where MCI provides local exchange service to such customers only via its own facilities. The advertisement therefore does not constitute the joint marketing of interLATA and resold local service and thus does not violate Section 271(e)(1) of the Communications Act, 47 U.S.C. § 271(e)(1). Moreover, since the advertisement has been run only in markets where MCI provides local service to large



business customers only via its own local facilities, the advertisement accurately represents a lawful service to those customers and thus may not constitutionally be prohibited.

### Introduction

This Amended Complaint is merely the latest in a series of attempts by Ameritech and other Bell Operating Companies (BOCs) to take any steps necessary to squelch incipient competition in the heretofore monopoly local exchange market. Last year, Ameritech filed an informal complaint speculating that MCI "apparently has repeatedly violated" Section 271(e)(1) by promoting local and interLATA service together.<sup>1</sup> At the time, however, MCI was not providing any local service on a resale basis in Ameritech territory. Thus, its marketing could not possibly have violated Section 271(e)(1). More recently, Pacific Bell has filed a complaint with the California Public Utilities Commission challenging MCI and AT&T marketing materials as violative of Section 271(e)(1).<sup>2</sup>

In an effort to stem this abusive misuse of process to stifle competition, MCI recently filed a Petition for Declaratory Ruling requesting the Commission to interpret its rules

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<sup>1</sup> Letter from Gary R. Lytle, Ameritech, to Hon. Reed E. Hundt, Chairman, FCC, dated October 30, 1997, at 1, attached to Notice of Informal Complaint, Ameritech, IC-97-00440 (Nov. 26, 1996).

<sup>2</sup> Pacific Bell (U 1001 C) v. AT&T Communications of California, Inc. (U 5002 C) and MCI Telecommunications Corporation (U 5001 C), Case No. 97-03-016 (filed March 12, 1997).